

'shall be liable to imprisonment for a term not exceeding five years and not less than two years'."

"From that it seems to me that the court has an *absolute discretion* to impose the maximum sentence of 5 years or any lesser sentence the minimum of which must not be less than two years."

In the result, he set aside the order of the learned president and substituted a sentence of two years' imprisonment.

It would appear that in doing so the learned judge was probably of the view that the prescription of a maximum term and a minimum term makes a term of imprisonment mandatory notwithstanding the use of the words "shall be liable". These words were construed by Aitken J. in *Public Prosecutor v. Man bin Ismail*⁽²⁾ where he held that "shall be liable to imprisonment" in section 3(a) of the Vagrants and Decrepit Persons Enactment (F.M.S. Cap. 191) did not render a sentence of imprisonment mandatory. He went on to say:

"To my mind, they give the court an absolute discretion as to whether it shall award a sentence of imprisonment or deal with the accused under and in accordance with the provisions of section 294 of the Criminal Procedure Code."

Here, we would say we have no doubt that if a court were minded to send the offender to prison, it must, as enacted in section 15(4), impose a term of not less than 2 years. Does the prescription of a maximum and a minimum term displace or override what Aitken J. referred to as "an absolute discretion as to whether it shall award a sentence of imprisonment or deal with the accused under and in accordance with the provisions of section 294 of the Criminal Procedure Code?"

Section 294 reads:

"294(i) When any person not being a youthful offender has been convicted of any offence punishable with imprisonment before any court if it appears to such court that regard being had to the character, antecedents, age, health or mental condition of the offender or to the trivial nature of the offence or to any extenuating circumstances under which the offence was committed it is expedient that the offender be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties and during such period as the court may direct to appear and receive judgment if and when called upon and in the meantime to keep the peace and be of good behaviour."

This section vests the court before which a person is convicted with power to suspend sentence for such period as the court may direct, and, if the offender behaves himself during such period, he would escape punishment for his offence. If he fails to observe the conditions of his bond, he would be liable to be apprehended and dealt with for his original offence. As Thomson J. (as he then was) said in *Public Prosecutor v. Idris*:⁽³⁾

"Section 294 which only applies in the case of adult offenders can only be made use of where a person has been convicted and where his conviction is for an offence punishable with imprisonment without the option of a fine."

I do not wish to lay down any hard and fast rule, which in any event would be difficult to prove, but magistrates would be well-advised only to make use of section 294 where an offence which is generally of a serious nature and which is punishable with imprisonment has been committed by an adult offender and where it is considered desirable to place him on probation."

A In our view, if the legislature intended that section 294 is to cease to have application in respect of an offence under section 15 of the Prevention of Crime Ordinance, it should be so expressed in the clearest possible language. We can find no such provision.

Our answer to the question, we repeat, is in the negative.

B

Question answered in the negative.

Solicitors: *Datuk S. P. Seenivasagam & Co.*

C ISLAND & PENINSULAR DEVELOPMENT LTD. & ANOR. v. REGISTRAR OF TITLES, KEDAH

[O.C.J. (Syed Agil Barakbah J.) June 2, 1973]

[Alor Star — Originating Summons No. 1731 of 1970]

D *Land — Transfer of — Transfer made to wrong party — Accompanying certificates — Registration — Duty of registrar — Whether formal defect or clerical error — Rectification — National Land Code, ss. 301 and 380.*

This was an appeal against the refusal of the Registrar of Titles to rectify the errors in certain transfer documents. The transfer documents and the accompanying certificates were submitted to the registrar for registration. The entries in the two accompanying certificates were correct but the names entered in the instruments of transfer were wrong. E Thus the two instruments of transfer and the accompanying certificates did not tally.

The question to be determined was whether the certificates accompanying the instruments of transfer had any legal significance and whether the applicants could have any recourse to section 380 National Land Code for an order to rectify the mistakes in the transfer documents.

F **Held:** the registrar was not under any legal duty to take notice of the certificate including the particulars of transfer when he checked the instruments of transfer for fitness in registration. Accordingly, in the absence of any formal defect or clerical error which required rectification, there was no necessity to have recourse to section 380 National Land Code.

G *Per Curiam:* the filing of any certificate or document not required under the National Land Code does not affect the fitness for registration of an instrument so long as the conditions under section 301 are complied with and the registrar is satisfied that such instrument is fit for registration.

ORIGINATING SUMMONS.

Mr. Triptipal Singh for applicants.

Tunku Dato' Mukhtar (Legal Adviser) for respondent.

H **Syed Agil Barakbah J.:** This is an application by way of originating summons for an order that the Registrar of Land Titles, Kedah, rectifies certain errors in two documents of title to land viz. Grant No. 1380 Lot 4417 and Grant No. 1310 Lot 4047, both in the Mukim of Sungei Patani, (hereinafter called the first and second grants respectively) pursuant to section 380 of the National Land Code by deleting the name of the transferee in the first grant and inserting it in the second grant and similarly deleting the name of the transferee and chargor in the second grant and inserting it in the first; and further for the instruments of transfer and charges relating to the two grants to be accordingly rectified.

The facts appearing in the affidavit of Mr. Triptipal Singh of Messrs. Triptipal Singh & Co., the solicitors for the first and second applicants state that on or about July 29, 1970, he submitted instruments of transfer in Form 14A from the first applicant to one Tan Atian in respect of land comprised in the first grant together with instruments of charge from Tan Atian to the second applicant and the registered document of title to the Registrar of Land Titles, Kedah, for registration. On the same day he also submitted to the said registrar for registration of transfer to one Chew Ghee Hean the land comprised in the second grant. Both applications were accompanied by certificates of the due execution of the instruments of transfer from the first applicant. The two instruments of transfer and the accompanying certificates however did not tally. The instrument of transfer to Tan Atian purported to transfer the land in the first grant to him and to create a charge thereon, whereas the accompanying certificate showed the transfer and the charge to and from Tan Atian was in respect of land in the second grant. Similarly, the instrument of transfer to Chew Ghee Hean purported to transfer the land in the second grant while the accompanying certificate referred to land in the first grant. It seems that the entries in the two accompanying certificates are correct but the names entered in the instruments of transfer are wrong. In spite of this anomaly the Registrar of Land Titles registered the instruments of transfer according to the particulars entered therein without going through the accompanying certificates. After registration the said registrar was requested by the applicants' solicitors to rectify the mistakes but he refused to do so. Hence the appeal to this court under section 418 of the National Land Code.

The execution of an instrument of transfer of land by a corporation is governed by section 210(3) of the Code which states:—

"(3) The execution of any such instrument by a corporation (whether aggregate or sole) shall be effected in such manner as is authorised by its constitution, or by any law for the time being in force:

Provided that, without prejudice to the power of corporations aggregate to adopt any other manner of execution authorised as aforesaid, any such instrument bearing —

- (i) the seal of such a corporation, and
- (ii) a statement, signed by the secretary or other permanent officer thereof, or his deputy, and by a member of the board of directors, council or other governing body, to the effect that the seal was affixed thereto in their presence,

shall, in favour of any purchaser, be deemed conclusively to have been duly executed by that corporation."

In contrast with the execution of any such instrument by a natural person by signing it or affixing his thumb thereto, a company is required to submit the instrument of transfer bearing the seal of the company and the statement as required. The certified copies of the two instruments of transfer in dispute (filed as Exhibit "A" and Exhibit "B") clearly show that the requirements of sub-section (3)(i) and (ii) have been complied with by the applicants. At the bottom of the documents the following words are written:—

"Seal affixed in our presence.

t.t.
Director.

("t.t." means "tanda tangan" or signature).

t.t.
Secretary."

As a result the instruments are deemed conclusively to have been duly executed by the applicants in favour of the purchasers, namely, Chew Ghee Hean and Tan Atian respectively.

The issue in dispute is whether the certificate accompanying the instruments of transfer Exhibit "A" and Exhibit "B" signed by the secretary of the applicant company has any legal significance. The learned counsel for the applicants submitted the certificate was filed in accordance with the practice of the Registry of Land Titles, Alor Star, requiring every instrument of transfer or charge from a company to be accompanied by such certificate and that if not so accompanied, the instrument of transfer would either be suspended or rejected and the whole documents would be returned for rectification. The practice was confirmed by the learned Legal Adviser who appeared for the respondent. He however submitted that as it was not required by any law, the registrar has no right to suspend or reject an instrument of transfer not accompanied by such certificate and in the particular case no such request was made. To my mind, the wording of the certificate appears to coincide with the first part of sub-section (3), i.e. "The execution of any such instrument by a corporation . . . shall be effected in such manner as is authorised by its constitution . . .". Under the proviso a corporation aggregate is allowed to adopt any other manner of execution as authorised by its constitution. If that is the case the applicants may be said to have complied with the general requirements of section 210(3). On the other hand, having complied with the express requirement of sub-section (3)(i) and (ii) on the instrument of transfer itself there was no necessity for the applicants to file any certificate to that effect. The seal of the company and the statement duly signed by the secretary and the director are sufficient in the circumstances to indicate by reasonable inference that the transfers by the applicants are in accordance with the constitution of the company. Anyway, this line was never taken up by counsel for the applicants and I cannot therefore act on a mere hypothesis or conjecture. In his affidavit counsel for the applicants submitted that the registrar should have requested the company for its proper resolution under section 365(3)(c)(ii) as required by section 294 (3)(b) of the Code. Both sections concern a management corporation which under section 357(2) is a body corporate having perpetual succession and a common seal and is established for the purpose of managing a particular sub-divided building as regulated by the by-laws contained in the Eighth Schedule of the Code. On the other hand, the provision of section 210(3) refers to a corporation, aggregate or sole. It does not appear to me that the first applicant is a management corporation but rather a corporation. The provisions of sections 294(3)(b) and 365(3)(c)(ii) do not therefore apply. Again, there is no provision in any part of the Code for submitting the particulars of transfer appearing below the certificate. With respect I agree with the learned Legal Adviser that the registrar was not under any legal duty to take notice of the certificate including the particulars of transfer when he checked the instruments of transfer for fitness under Chapters 2 and 3 of Part Eighteen. To my mind the practice

of requiring such certificate by the Land Registry serves no useful purpose and there seems to be no justification for suspending or rejecting a transfer of an instrument duly executed according to sub-section 3(ii) on the ground that such certificate has not been filed together. On the other hand, as the instruments of transfer, Exhibits "A" and "B", were considered fit for registration and, in the absence of any formal defect or clerical error which required rectification, there was no necessity for the registrar to suspend or reject their registration. There was nothing to indicate that the names of the transferees Tan Atian and Chew Ghee Hean had been wrongly entered in the respective instruments of transfer. The instruments of transfer and the documents of titles thereto having been registered, and there being no mistake or error made by the registrar, there is no necessity to have recourse to the provision of section 380. The filing of any certificate or document not required under the Code does not, in my view, affect the fitness for registration of an instrument so long as the conditions under section 301 are complied with and the registrar is satisfied that such instrument is fit for registration.

I have no alternative but to dismiss the appeal. I make no order as to costs in view of what has been submitted and admitted about the wrong practice of requiring the filing of certificates by the registry together with the instruments of transfer duly executed by the applicants.

Appeal dismissed.

Solicitors: *Triptipal Singh & Co.*

ISLAND & PENINSULAR DEVELOPMENT BHD. & ANOR. v. LEGAL ADVISER, KEDAH & ORS.

[O.C.J. (Syed Agil Barakbah J.) June 2, 1973]

[Alor Star — Originating Summons No. 552 of 1971]

Land — Building estate — Mistake in numbering of lots — Wrong grant given to wrong party — Mistake due to applicant's fault — Registrar of Titles refusing to rectify — Whether error can be rectified by Registrar of Titles — National Land Code, s. 380.

The first applicant obtained approval for the sub-division of certain lands into 31 units on which were to be erected 31 units of terrace houses. These terrace houses were comprised in Resurvey Lots 3889 to 3921 in serial order. A grant was issued in respect of each of these resurvey lots also serially numbered from 1152 to 1184. Thus Lot 3889 was comprised in Grant No. 1152 and so on to Lot 3921 which was comprised in Grant No. 1184. As a result of a mistake on the part of the first applicant in the preparation of a site plan of the project the wrong grants were given to the purchasers although they occupied the houses they intended to purchase. Neither the first applicant nor the Registrar of Titles was aware of the mistakes made by the applicants at the time the grants were issued. The first applicant (together with the second applicant who were a subsidiary company of the first applicant and registered chargees of the lands) applied for the correction of the mistakes in the documents of title under section 380 of the National Land Code. The Registrar of Titles refused to do so. The applicants appealed.

A Held: section 380(1)(a) National Land Code is confined to any error or omission made by the Registry of Land Titles and does not extend to that made by the parties in the instruments of transfer presented for registration and accordingly, the registrar had acted in accordance with the requirements of the Code in refusing to rectify the documents of title pertaining to the transfers of lands in dispute.

ORIGINATING SUMMONS.

B *Triptipal Singh* for the applicant.

Tunku Dato' Mukhtar (Legal Adviser) for the respondents.

C **Syed Agil Barakbah J.:** This is an application by way of originating summons for an order requesting the Registrar of Land Titles, Kedah, (hereinafter called 'the registrar') to rectify certain mistakes under section 380 of the National Land Code (hereinafter called 'the Code').

The first applicant, Island & Peninsular Development Berhad, submitted a proposed amalgamation and sub-division plan of Lots 367, 379 and 1904, Mukim of Sungei Patani, District of Kuala Muda, Kedah, and the plan was approved by the Land Office. The approval was for the erection of a row of thirty-one single storey terrace houses. The lot numbers given by the Chief Surveyor run from 3889 to 3921 in serial order. A grant for each lot was subsequently issued corresponding to the lot numbers stated above, also numbered serially, from 1152 to 1184. Subsequent to the approved plan being passed, the first applicant prepared a site plan of the houses for sale to the public but numbered them wrongly by giving the plot numbers 1 to 33 from right to left instead of from left to right according to the numbers of the sub-divided plots. As a result, plot No. 1 which according to the site plan refers to Lot No. 3889 corresponding to grant No. 1152 became plot No. 33 instead of plot No. 1 and so on until plot No. 33 which refers to Lot No. 3921 corresponding to grant No. 1184 became plot No. 1 instead of plot No. 33. Because of the error the purchaser buying one of the houses, e.g. plot No. 1 shown on the site plan, was given grant No. 1152 Lot No. 3889 instead of the corresponding grant No. 1184 Lot No. 3921. Similarly, in the case of the other purchasers. All these purchasers have occupied the correct houses which they intended to purchase but they have been given the wrong grants which have not been registered in their names. In the circumstances they have not acquired ownership of the correct houses by virtue of having been registered in the wrong grant.

H Originally the grants were registered in the name of the first applicant as titles in continuation under section 164(1)(b) of the Code. The purchasers received loans to purchase the houses from the second applicant, a subsidiary company of the first applicant, and have charged their lands to them. The grants were then submitted to the Registrar of Titles, Kedah, **I** for registration together with the forms of transfer (Form 14A) which were filled *inter alia* with the grants and lot numbers in the wrong names of the respective buyers. Neither the applicants nor the registrar were aware of the mistakes at the time the respective grants were issued. It is apparent that the mistakes lie with the applicants who drew up smaller replicas of the